



Paper No. 9

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OFFICE OF PETITIONS

In re Application of
Graves et al.
Application No. 09/481,065
Filed: January 11, 2000
Attorney Docket No. 9D-RG-19384

ON PETITION

This is a decision on the "Petition for Withdrawal of Holding of Abandonment or, in the Alternative, for Revival of an Unintentionally Abandoned Patent Application," filed on June 4, 2002, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment for the above-identified application and, alternatively, a petition under 37 CFR 1.137(b) to revive this application.

The petition under 37 CFR 1.181 is **DISMISSED**.
The alternative petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned on April 19, 2000 for failure to timely respond to the February 18, 2000 Notice to File Missing Parts of Nonprovisional Application ("2/18/00 Notice"), which provided an extendable 2-month reply period. No extension of time under 37 CFR 1.136(a) was obtained.

§1.181 petition

The petition requests withdrawal of the holding of abandonment on the basis that the 2/18/00 Notice was not received by General Electric Company ("GE").

A grantable petition to withdraw the holding of abandonment, alleging non-receipt of an Office action which is the cause of the abandonment, must overcome a strong presumption that the Office action at issue, duly addressed and indicated as mailed, was timely delivered to the addressee.¹

The showing required to overcome this presumption consists of:²

¹ 1156 OG 53 (Oct. 25, 1993).

² *Id.*

- (1) a statement from the practitioner:
 - stating that the Office action was not received by the practitioner;
 - attesting, by referencing the docket record in (2) below, that a search of the relevant file jacket and docket records indicates that the Office action was not received; and
- (2) a copy of the docket record where the allegedly non-received Office action would have been entered had it been received and docketed.

The 2/18/00 Notice was addressed to GE at the correspondence-address-of-record at that time: Appliance Park, 2-225, Louisville, KY 40225, and according to the PTO record was mailed to that address. If the file was subsequently transferred to GE's outside counsel, the fact that the 2/18/00 Notice is not presently in the transferred file does not establish that GE never received the 2/18/00 Notice; neither does it rule out the possibility that the 2/18/00 Notice had been received by GE but was never docketed.³ The §1.181 petition is thus dismissed and the holding of abandonment in this application will not be withdrawn. No petition fee is owed.

§1.137(b) petition

In reply to the 2/18/00 Notice, the petition encloses a signed "Declaration and Power of Attorney" and an authorization to charge the application basic filing fee of \$740 to Deposit Account No. 01-2384. Also included are: an authorization to charge the \$1,280 petition fee and the \$130 surcharge for late filing of an acceptable declaration to the same deposit account, and a statement that the entire delay in filing the missing items from the due date until the filing of a grantable §1.137(b) petition was unintentional. The §1.137(b) petition is thus granted.

The new power of attorney and correspondence address have been entered and made of record.

The application is being returned to the Office of Initial Patent Examination for further processing, including issuance of a filing receipt if one has not yet been mailed. Thereafter, the application will be forwarded to the appropriate Technology Center for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.



RC Tang
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

³ See MPEP section 711.03(c)(II) (Aug. 2001).



UNITED STATES
PATENT AND
TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov



Bib Data Sheet

CONFIRMATION NO. 5148

SERIAL NUMBER 09/481,065	FILING DATE 09/18/2002 RULE	CLASS 219	GROUP ART UNIT 3742	ATTORNEY DOCKET NO. 9D-RG-19384
APPLICANTS TODD VINCENT GRAVES, LOUISVILLE, KY; DENNIS PATRICK KILL, LOUISVILLE, KY; JESSE SPALDING HEAD, LOUISVILLE, KY; CHARLES RAY SMITH, SHELBYVILLE, KY;				
** CONTINUING DATA ***** This appln claims benefit of 60/115,744 01/13/1999				
** FOREIGN APPLICATIONS *****				
IF REQUIRED, FOREIGN FILING LICENSE GRANTED ** 02/17/2000				
Foreign Priority claimed <input type="checkbox"/> yes <input type="checkbox"/> no 35 USC 119 (a-d) conditions <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> Met after met Allowance Verified and Acknowledged _____ Examiner's Signature Initials		STATE OR COUNTRY KY	SHEETS DRAWING 11	TOTAL CLAIMS 20
			INDEPENDENT CLAIMS 3	
ADDRESS John S. Beulick Armstrong Teasdale LLP One Metropolitan Square, Suite 2600 St. Louis ,MO 63102				
TITLE COMBINATION OVEN ILLUMINATION IN MICROWAVE ONLY COOKING MODE				
FILING FEE RECEIVED 870	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:		<input type="checkbox"/> All Fees <input type="checkbox"/> 1.16 Fees (Filing) <input type="checkbox"/> 1.17 Fees (Processing Ext. of time) <input type="checkbox"/> 1.18 Fees (Issue) <input type="checkbox"/> Other _____ <input type="checkbox"/> Credit	